

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
adoption of New Rule I and)	ON PROPOSED ADOPTION AND
amendment of ARM 42.15.601,)	AMENDMENT
42.15.602, 42.15.603, and)	
42.15.604 pertaining to medical)	
savings accounts for personal)	
income taxes)	

TO: All Concerned Persons

1. On April 1, 2004, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rule I and amendment of ARM 42.15.601, 42.15.602, 42.15.603, and 42.15.604 relating to medical savings accounts for personal income taxes.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., March 23, 2004, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 1712, Helena, Montana 59604-1712; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Account administrator" means, in addition to the definition found in 15-61-102, MCA, any person, partnership, limited liability company, limited liability partnership, or corporation that acts as a third party fiduciary to administer a medical savings account and is either a bank, savings and loan, credit union, or trust company, a health care insurer, a certified public accountant, or an employer who is self-insured under ERISA.

(2) "Household" shall mean a family living together.

(3) "Last business day" means the last day of the account administrator's business year.

(4) "Long-term care" means a period of not less than 12 consecutive months in which a necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care service is provided in a setting other than an acute care unit of a hospital.

(5) "Recovery" means the return or recoupment of amounts that were previously deducted in Montana taxable income or credited against Montana tax in any prior taxable year.

(6) "Self-administered" refers to accounts that are administered by the account holder for their own benefit.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-112, 15-61-102, and 15-61-201, MCA

REASONABLE NECESSITY: The department is proposing New Rule I to define the terms used in Chapter 15, sub-chapter 6, relating to medical savings accounts. This text was previously found in ARM 42.15.401, but with the reorganization of the credit, exemptions, and incentives into various sub-chapters in Chapter 4, this text better fits into new sub-chapter 6, which deals with the medical savings accounts.

4. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

42.15.601 MEDICAL SAVINGS ACCOUNT ADMINISTRATOR

REGISTRATION (1) Every account administrator except a self-administered account holders is required to register on a form provided by the department.

(2) through (6) remain the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. ~~15-61-201~~ 15-61-204, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.601 for housekeeping purposes only and correct the implementing cite.

42.15.602 MEDICAL SAVINGS ACCOUNT ADMINISTRATOR

REPORTING AND PAYMENTS (1) Every ~~self-administered~~ account holder or account administrator is required to annually submit the following information regarding each medical savings account:

(a) through (f) remain the same.

(g) interest or other income earned on the ~~proceeds~~ principal of the medical savings account; and

(h) remains the same.

(2) The ~~self-administered~~ account holder must also include the name and address of where the account is established and the account number.

(3) Both the contributions and any interest or other income earned on the account of a medical savings account are to be segregated by the ~~self-administered~~ account holder or account administrator from all other accounts.

(4) Each ~~self-administered~~ individual account holder must:

(a) establish a separate medical savings account with a financial or other approved institution; and

(b) be segregated by the account holder from all other accounts.

(5) Jointly held accounts do not qualify, although each spouse may be an account holder, regardless of income tax filing status, ~~may each be an account holder~~. They then Each spouse would be allowed, within certain limitations, to ~~each~~ reduce the federal adjusted gross income by the maximum allowable reduction ~~allowed~~ of \$3,000.

(5)(6) ~~Any y~~Year-end reporting of interest earned reports provided to the taxing authorities and ~~to the account holder of interest earned~~ must be ~~done~~ provided in such a manner so that ~~any~~ the interest earned on that account can be separately identified.

(7) For the purpose of determining the amount of interest or other income earned on the principal which is excluded from Montana adjusted gross income, when interest or other income earned is on principal and excess contributions, the account administrator must:

(a) allocate the total interest or other income earned to that of principal and excess contributions; and

(b) exclude from Montana adjusted gross income only that amount of interest or other income earned on the principal. Interest or other income earned in the taxpayer's taxable year on the excess contributions is taxable and reported in Montana adjusted gross income for the taxable year it is received; and

(c) interest or other income earned is not excluded for Montana adjusted gross income on excess contributions until such time as the excess contribution is reclassified as principal. Excess contributions are reclassified as principal in the year the excess contributions are excluded from Montana adjusted gross income.

(6)(8) On or before January 31, an account administrator, other than an account holder, must file the information required under (1) on forms provided by or authorized by the department.

(7)(9) Each ~~self-administered~~ individual account holder must file the information required in (1) on forms provided by or authorized by the department and be remitted with the individual income tax form for the corresponding tax year.

(8)(10) ~~Self-administered a~~Account holders or account administrators who withhold penalties on monies used for items other than eligible medical expenses or long-term care expenses must submit the penalties to the department.

(a)(11) ~~Self-administered a~~Account holders and account administrators must remit the penalties monthly by the 15th day of the following month when the total amount of penalties exceed \$500.

(b)(12) ~~Self-administered a~~Account holders and account administrators whose total penalties withheld during the ~~calendar~~ calendar year are less than \$500 must remit the penalties on or before January 31 of the following year to the department.

(c) ~~Each self-administered individual account holder or account administrator must remit penalties and file the information required under (7)(a)~~

and ~~(b)~~ on forms provided by or authorized by the department Self-administered individual account holders must report and remit penalties with the individual income tax form for the corresponding tax year.

~~(9)~~(13) Failure to remit any withheld penalties within the time provided is considered to be an unlawful conversion of trust money. Penalties provided in 15-1-216 and 15-30-321, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be withheld from ineligible withdrawals of the account holder.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-61-202 and 15-61-204, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.602 for housekeeping purposes. The amendments will bring the rules in line with the practice of the department when accounts are self-administered and help clarify what interest is excluded from the adjusted gross income when a medical savings account has both principal and excess contributions.

42.15.603 MEDICAL SAVINGS ACCOUNT - WITHDRAWALS

(1) remains the same.

(2) Requests made by account holders from account administrators for withdrawals to pay for eligible medical expenses must be supported by an itemized statement of expenses that were either paid or charged by the account holder and the signature of the account holder attesting that these expenses are "eligible medical expenses." An eligible medical expense means any medical expense that is deductible for purposes of section 213(d) of the ~~Internal Revenue Code~~ IRC.

(3) through (6) remain the same.

(7) Except as provided in (8), all payments made from a medical account must be made payable to the account holder, to the eligible medical provider, or to their estate or to their legal guardian.

(8) If an agreement exists between the account holder, account administrator, and the payee, withdrawals for eligible medical expenses can be done electronically.

(9) All medical records and expenses are to be kept confidential by the account administrator unless the account holder gives authorization ~~is given by the account holder.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-61-203, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.603 for housekeeping purposes only.

42.15.604 INDIVIDUAL LIABILITY (1) If a corporate account administrator, limited liability company, or a limited partnership fails to withhold or fails to remit any penalties withheld to the department as required, the officers and owners are individually responsible for the penalties. A financial institution is not responsible for

analyzing the eligibility of the expenses if the account holder attests that the withdrawals ~~made~~ are for eligible medical expenses.

(2) Each ~~self-administered~~ account holder is individually responsible for the withholding and remitting of penalties.

(3) In the case of a bankruptcy by an account administrator, the liability for the penalties remains unaffected, and the individual or owners remains liable for the amount of penalties withheld but ~~unpaid~~ not paid.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-61-203, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.604 for housekeeping purposes only.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 1712, Helena, Montana 59604-1712, and must be received no later than April 9, 2004.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ CLEO ANDERSON

CLEO ANDERSON

Rule Reviewer

/s/ LINDA M. FRANCIS

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Director of Revenue

Certified to the Secretary of State March 1, 2004